

# Memorandum



**Date:** October 7, 2014

**To:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

Agenda Item No. 8(F)(11)

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

**Subject:** Contract Award Recommendation for Contract No: Z00051-PG GOB ESP Building Better Communities General Obligation Bond Program Project No. 231, Joseph Caleb Center New Parking Garage

## **Recommendation**

It is recommended that the Board of County Commissioners (Board) authorize the award of a construction contract in the amount of \$9,644,840 to ABC Construction, Inc. (ABC) for construction of the new Joseph Caleb Center Parking Garage at 5400 NW 22 Avenue, Miami, Florida. This project was originally awarded by the County Mayor pursuant to the Economic Stimulus Ordinance, Section 2-8.2.7 of the Code of Miami-Dade County, on March 11, 2014 (Attachment 1). A timely bid protest, the outcome of which is summarized immediately below, was filed on the award.

## **Bid Protest**

Following the evaluation of bids, based on the method of award to the lowest responsive and responsible bidder, and verification that the vendor met the responsibility requirements outlined in the solicitation, ABC Construction, Inc. (ABC) was recommended for award on March 11, 2014.

On March 19, 2014, the third-lowest bidder, N&J Construction Corporation (N&J), filed a timely bid protest stating that ABC did "not satisfy the County's requirements identified in the advertisement for bid." A formal protest hearing was held on August 20, 2014. The Hearing Examiner concluded that the evidence showed that the County did not act in an arbitrary or capricious manner in awarding the contract to ABC. The Hearing Examiner further recommended that the award to ABC be upheld, and that N&J's bid protest be denied. A copy of the Findings and Recommendations of the Hearing Examiner are attached hereto (Attachment 2).

## **Scope**

The Joseph Caleb Center, a countywide facility utilized by residents throughout Miami-Dade County, is located in District 3, which is represented by Commissioner Audrey M. Edmonson.

## **Fiscal Impact/Funding Source**

The construction contract for the parking garage is \$9,644,840 and is being funded from the Building Better Communities General Obligation Bond Program Project No. 231, as shown in the Fiscal Year 2014-15 Adopted Budget and Multi-Year Capital Plan.

## **Track Record/Monitor**

Based on the County's Capital Improvements Information System, there have been 28 evaluations of ABC on prior County contracts. These evaluations reflect an above-satisfactory performance with an average rating of 3.3 out of 4.0. The contract will be monitored by Edgar Lugo from the Internal Services Department's (ISD's) Design and Construction Services Division.

## **Delegated Authority**

The authority of the County Mayor or County Mayor's designee to execute and implement this contract is consistent with those authorities granted under Section 2-8.2.7 of the County Code and also includes all authorities specified in the Contract Documents such as Termination of the Contractor for Default or Convenience, and to expend the dedicated allowances identified in Attachment 1 to the item. No additional authority is being requested within the body of this contract.

## **Background**

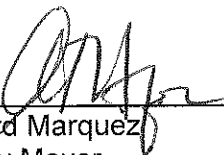
Upon approval by the Board, it is expected that construction on the parking garage will begin by

December 1, 2014 and be completed in February 2016.

Concurrently, ISD staff has been working closely with stakeholders and tenants of the Joseph Caleb Center to finalize other project elements, including temporary tenant relocations and improvements to the existing tower building in order to renovate four floors and enclose the atrium space. With the Board's recent approval of an amendment to the design consultant's contract, it is expected that the re-design and permitting of the tower renovations will be completed in June 2015. At that time, a solicitation will be advertised to obtain a general contractor to perform the tower renovations.

Overall, it is expected that all construction will be completed and tenants moved back into the newly improved Joseph Caleb Center by the end of 2016.

Attachments

  
\_\_\_\_\_  
Edward Marquez  
Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** October 7, 2014

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 8(F)(11).

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8(F) (11)

Veto \_\_\_\_\_

10-7-14

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AWARDING, APPROVING AND AUTHORIZING THE EXECUTION BY THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE OF A CONTRACT IN THE AMOUNT OF \$9,644,840.00 BETWEEN MIAMI-DADE COUNTY AND ABC CONSTRUCTION, INC. FOR THE CONSTRUCTION OF THE NEW JOSEPH CALEB CENTER PARKING GARAGE, CONTRACT NO. Z00051-PG GOB ESP FUNDED FROM BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 231; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXPEND THE DEDICATED ALLOWANCES IDENTIFIED IN ATTACHMENT 1 TO THE ITEM AND TO EXERCISE ANY TERMINATION AND RENEWAL PROVISIONS CONTAINED THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board awards and approves the Contract between Miami-Dade County and ABC Construction, Inc. in the amount of \$9,644,840.00 ("Contract") for the construction of the new Joseph Caleb Center Parking Garage, Contract No. Z00051-PG GOB ESP funded from Building Better Communities General Obligation Bond Program Project No. 231, in substantially the form attached hereto and made part hereof, and authorizes the County Mayor or the County Mayor's designee to execute the Contract after review and approval by the County Attorney's Office, to expend the dedicated allowances identified in Attachment 1 to the item; and to exercise any cancellation and renewal provisions therein.

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman  
Lynda Bell, Vice Chair

Bruno A. Barreiro  
Jose "Pepe" Diaz  
Sally A. Heyman  
Jean Monestime  
Sen. Javier D. Souto  
Juan C. Zapata

Esteban L. Bovo, Jr.  
Audrey M. Edmonson  
Barbara J. Jordan  
Dennis C. Moss  
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 7<sup>th</sup> day of October, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

DF

Daniel Frastai

CLERK, MIAMI-DADE COUNTY  
**MEMORANDUM**

2014 MAR 11 PM 2:19

CLERK, CIRCUIT & COUNTY CTY  
 MIAMI-DADE COUNTY, FLA.  
 #1

**Date:** February 19, 2014

**To:** Carlos A. Gimenez  
Mayor

**From:** Lester Sola  
Director  
Internal Services Department

**Subject:** Contract Award Recommendation for the Joseph Caleb Center New Parking Garage;  
Project No. Z00051-PG GOB ESP, Contract No: Z00051-PG, to ABC Construction, Inc.

**RECOMMENDATION:**

This recommendation for award of Contract ISD No. Z00051-PG between Miami-Dade County and ABC Construction, Inc., in an amount not to exceed \$10,482,409 has been prepared by the Internal Services Department (ISD) and is recommended for approval.

Pursuant to Section 2-8.2.7 of the Code of Miami-Dade County, "Economic Stimulus Program" (ESP), the Mayor has delegated authority to award this contract to the lowest responsive, responsible bidder. The contract amount resulting from this contract award recommendation is within 10% of the advertised base estimate.

**BACKGROUND:**

As one of the more than 300 capital improvement projects funded by the General Obligation Bond (GOB) Program approved by voters, the construction of the Joseph Caleb Center New Parking Garage project is of significant importance to the residents of Commission District 3. This project will replace the existing four-acre surface parking areas on the site of the Joseph Caleb Center with a new, two-story, 324-space parking garage. An additional 164 parking spaces will be created, with enhanced safety and accessibility features for constituents visiting the Joseph Caleb Center.

The Review Committee of ISD's Small Business Development Division met to review the scope of this project on September 5, 2013 and it was determined that 100% of the work would be set aside for a Community Small Business Enterprise; and a Community Workforce Program goal of 25.10% was established in order to achieve the creation of 77 local jobs.

The proposed design is sensitive to the adjacent single-family residential neighborhood by maintaining 25 foot setbacks on the west property line and an 84-foot setback to the north side of the property. The existing south and east property line setbacks will not be altered or affected by this project. The highest elevation of all the newly proposed structures will be 40 feet and 10 inches above grade.

An Invitation to Bid issued under full and open competition advised prospective bidders that a recommendation for award would be conditioned upon the submittal of any and all documents required by the County as part of the bid evaluation process. These include, but are not limited to, the schedule of values and project schedule. Internal Services Department (ISD) staff conducted a detailed responsibility review to assess the contractor's ability to perform this project, and conducted a detailed review of documentation submitted by the lowest bidder, ABC Construction, Inc. (ABC). This included, but was not limited to, the firm's past performance, the capacity of its personnel to perform the services, available business and litigation reports, financial condition, integrity, capability, experience, quality of services provided under other contracts, and the schedule of values to support the proffered bid price. After

careful consideration and price negotiations, ABC's bid represents the best value for this project, and is therefore recommended for award of this contract.

**COMMISSION DISTRICT:** District 3

**COMMISSION DISTRICTS IMPACTED:** Countywide

**FUNDING SOURCE:** \$10,482,409 - Building Better Communities GOB Program. This capital project is included in the FY 2013-14 Adopted Capital Budget, All Years' Funding, Book Page 294.

**OPERATIONS/MAINTENANCE COST:** The annual operating/maintenance cost for this facility has been estimated to be \$190,000. This cost will be funded through departmental operating funds.

**CONTRACT PERIOD:** 420 calendar days to obtain substantial completion (excluding Warranty Administration Period and review time of deliverables by County staff)

**CONTINGENCY PERIOD:** 42 calendar days

**COMMENTS:** Attachment 1 contains additional information on the technical certification requirements, number of bid packages received, and other information on this project.

**DELEGATED AUTHORITY:** The authority of the County Mayor or County Mayor's designee to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County under Section 2-8.2.7 and also includes all authorities specified in the Contract Documents such as Termination of the Contractor for Default or Convenience. No additional authority is being requested within the body of this contract.

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**APPROVED:**

  
COUNTY MAYOR

\_\_\_\_\_  
DATE

## ATTACHMENT 1

**PROJECT NAME:** Joseph Caleb Center New Parking Garage

**PROJECT NO:** Z00051-PG GOB ESP

**CONTRACT NO:** Z00051-PG

**PROJECT LOCATION:** 5400 NW 22<sup>nd</sup> Avenue, Miami, FL 33142

**PRIMARY COMMISSION DISTRICT:** District 3 Audrey M. Edmonson

<b>PROJECT SITES:</b>	<u><b>SITE #</b></u>	<u><b>LOCATION</b></u>	<u><b>DIST</b></u>	<u><b>ESTIMATE</b></u>	<u><b>T-S-R</b></u>
	#70306	5400 NW 22 <sup>nd</sup> Avenue, Miami, FL 33142	3	\$10,482,409	53-15-41

**APPROVAL PATH:** Mayor's Authority  
This project is included in the Economic Stimulus Plan.

**USING DEPARTMENT:** Internal Services Department

**MANAGING DEPARTMENT:** Internal Services Department

### Fiscal Impact / Funding Source

<b>FUNDING SOURCE:</b>	<b>SOURCE</b>	<b>PROJECT NO.</b>	<b>SITE NO.</b>	<b>AMOUNT</b>
	Building Better Communities GOB Program	117200	70306	\$10,482,409

**PTP FUNDING:** No

**GOB FUNDING:** Yes

**ARRA FUNDING:** No

<b>CAPITAL BUDGET PROJECT</b>	<b>CAPITAL BUDGET PROJECT # - DESCRIPTION</b>	<u><b>AWARD ESTIMATE</b></u>
	117200- JOSEPH CALEB CENTER ADDITIONAL PARKING AND FACILITY IMPROVEMENTS - BUILDING BETTER COMMUNITIES BOND PROGRAM Book Page: 294 Funding Year: Adopted Capital Budget Book for FY 2013-14, All Years' Funding	\$10,482,409

<b>GOB PROJECT:</b>	<u><b>GOB PROJECT # - DESCRIPTION</b></u>	<u><b>GOB AWARD ESTIMATE</b></u>
	231-Construct Additional Parking and Provide Facility Improvements at the Caleb Center	\$10,482,409



Total Construction Cost: **\$10,482,409**

**PROJECT TECHNICAL CERTIFICATION REQUIREMENTS:** Miami-Dade County Contractor's Certification is required in one of the following categories: General Building, General Engineering, or other categories as applicable to Chapter 10 of the Miami-Dade County Code, or State of Florida General Contractor's License.

**BID PACKAGES ISSUED:** 17

**BIDS RECEIVED:** 3

**TOTAL CONTRACT PERIOD:** 420 days From issuance of Notice to Proceed (NTP) to Final Acceptance (including punch list work). Excludes Warranty Administration period and time allotted to County staff for review of deliverables.

**CONTINGENCY PERIOD:** 42 days

**IG FEE INCLUDED IN BASE CONTRACT:** Yes

**ART IN PUBLIC PLACES:** Yes

**BASE ESTIMATE:** \$8,350,177

**BASE CONTRACT AMOUNT:** \$8,745,000 (\*)

CONTINGENCY ALLOWANCE (SECTION 2-8.1 MIAMI DADE COUNTY CODE):	AMOUNT	TYPE	PERCENT (*)	COMMENT
	\$437,250	New Construction	5% of base contract amount	County Ordinance 00-65
ALTERNATE NO. 3	\$550,000		6% of base contract amount	Contractor to provide the total cost associated with fabrication, delivery, labor and material necessary to install trellis system around all open bays on all floors of the exterior parking garage perimeter. Finish: electrostatic paint.
ALTERNATE NO. 4	(\$87,410)		<1% of base contract amount	Contractor to deduct the total cost of fabrication, delivery, labor and materials related to the installation of the ground floor aluminum mesh panels as indicated in the permit set of plans,

should Alternate Nos. 2  
or 3 be chosen instead.

<b>SUBTOTAL CONTRACT AMOUNT:</b>	\$9,644,840		
<b>DEDICATED ALLOWANCE FOR ART IN PUBLIC PLACES:</b>	\$144,672	1.5% of subtotal contract amount	Administrative Order 3-11
<b>DEDICATED ALLOWANCE FOR PERMIT FEES:</b>	\$192,897	2% of subtotal contract amount	Permit-related expenses
<b>DEDICATED ALLOWANCE FOR DIVISION 17 PACKAGE:</b>	\$500,000	5% of subtotal contract amount	Expenditures related to Technology Infrastructure work (Not part of the Contractor's scope of work)
<b>TOTAL CONSTRUCTION COST:</b>	\$10,482,409		

(\*) Percentages are approximate, as they may not reflect the exact amount of money involved in each service.

**Track Record/Monitor**

**SBD HISTORY OF  
VIOLATIONS:** None

**EXPLANATION:** ABC Construction, Inc. (ABC) has been in business for 23 years, and has provided evidence of over 10 years of experience as a general contractor in construction work. Based on references submitted by the selected contractor, as well as on research of County records, the findings were determined to be acceptable for the purposes of meeting the responsibility requirements set forth in the bid documents (copy attached). Twenty-eight (28) evaluations conducted on ABC's performance are available through the County's Capital Improvements Information System (CIIS), which reflect ABC's average evaluation score of 3.3 out of a possible 4.0. In addition, County staff further exercised due diligence by obtaining Dun & Bradstreet (D&B) and Public Access to Court Electronic Records (PACER) reports (copy attached) on ABC in order to examine the firm's financial and legal standings, which were determined to be acceptable.

**BID OPEN DATE:** 11/22/2013

**BID BOND EXPIRES:** 5/21/2014

**BID VALID UNTIL:** 5/21/2014

**ESTIMATED NOTICE TO  
PROCEED:** 3/25/2014

**PRIME CONTRACTOR:** ABC Construction, Inc.

**COMPANY PRINCIPAL/QUALIFIER:** Jorge Gonzalez, President  
Certified General Contractor License No. CGCA60037

**COMPANY STREET ADDRESS:** 7215 NW 7<sup>th</sup> Street, Miami, FL 33126

**YEARS IN BUSINESS:** 23

**PREVIOUS CONTRACTS WITH COUNTY IN THE LAST FIVE YEARS:** A Firm History Report from the Internal Services Department, Division of Small Business Development, reflects that ABC has been awarded 15 construction contracts with the County in the last five years. The awarded contract amount is \$21,005,032 including \$125,512 in change orders approved by the Board.

**SUB CONTRACTORS AND SUPPLIERS (SECTION 10-34 MIAMI DADE COUNTY CODE):** A comprehensive Subcontractor and Supplier Listing Form has been submitted by ABC, and is hereby attached.

**MINIMUM QUALIFICATIONS EXCEED LEGAL REQUIREMENTS:** Yes. The County required that the selected General Contractor demonstrate experience as prime contractor responsible for the construction of one (1) parking garage of comparable size and complexity to the facility described in this solicitation, or experience as Prime Contractor responsible for the construction of one (1) building structure of comparable size and complexity to the facility described in this solicitation.

**STANDARD PAYMENT AND PERFORMANCE BOND:** Yes. Progress Payment, Payment and Performance Bond.

**REVIEW COMMITTEE:** **MEETING DATE:** 9/5/2013 **SIGNOFF DATE:** 9/5/2013

**APPLICABLE WAGES:** Yes  
(RESOLUTION No. R-54-10)

REVIEW COMMITTEE ASSIGNED CONTRACT MEASURES:	TYPE	GOAL	ESTIMATED VALUE	COMMENT
	CSBE	100.00%	\$9,644,840	N/A
	CWP	25.10%	77 jobs	N/A

**MANDATORY CLEARING HOUSE:** Yes

**CONTRACT MANAGER NAME/PHONE/E-MAIL:** Fernando V. Ponassi, 305-375-3965 FernanP@miamidade.gov  
MA Arch., LEED®AP

**PROJECT MANAGER NAME/PHONE/E-MAIL:** Edgar Lugo 305-375-4640 LugoE@miamidade.gov



Internal Services Department  
CONTRACTS ADMINISTRATION SECTION  
BID TALLY SHEET

Project No.: Z00051  
Project Description: Joseph Caleb Center New Parking Garage  
Bid Due Date: 11/22/2013 Bid Opening Date: 11/22/2013 Number of Addenda Issued: 5

Bid No.	Bidder	Base Bid	Addendum No. 1				Addendum No. 2				Addendum No. 3				Addendum No. 4			
			Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1	ABC Construction Inc.	Base Bid																
		Alt No. 1																
		Alt No. 2																
		Alt No. 3																
		Alt No. 4																
2	Lunacon Construction Group	Base Bid																
		Alt No. 1																
		Alt No. 2																
		Alt No. 3																
		Alt No. 4																
3	Perez Guri Corporation dba N&J Construction Corporation	Base Bid																
		Alt No. 1																
		Alt No. 2																
		Alt No. 3																
		Alt No. 4																

Signature of Person Opening Bids: *[Signature]* Date: 11/25/13  
Name of Witness: *[Signature]* Date: 11/25/13  
Manager, Contracts Administration Section

Comments:  
ALT. 1: Contractor to provide a total cost for an additional parking level equivalent to the construction documents second floor, creating a third floor not indicated on the roof level. Cost to include, materials, labor, services, supervision, tools, equipment, and all other items necessary for the successful completion of the additional level. This additive alternate will be issued as an addendum.  
ALT. 2: Contractor to provide the total cost associated with fabrication, delivery, labor and material necessary to install a trellis system around all open bays on all floors of the exterior parking garage perimeter, approximately 15,000 square feet (exact amount to be verified and be the responsibility of the general contractor). Please refer to Typical Building Bay Elevation Detail and Typical Trellis Section issued via Addendum No. 2. Finish: anodized aluminum.  
ALT. 3: Contractor to provide the total cost associated with fabrication, delivery, labor and material necessary to install trellis system around all open bays on all floors of the exterior parking garage perimeter, approximately 15,000 square feet (exact amount to be verified and be the responsibility of the general contractor). Please refer to Typical Building Bay Elevation Detail and Typical Trellis Section issued via Addendum No. 2. Finish: electrocoat paint.  
ALT. 4: Contractor to deduct the total cost of fabrication, delivery, labor and materials related to the installation of the ground floor aluminum mesh panels as indicated in the permit set of plans, should Alternate Nos. 2 or 3 be chosen instead.

**JOSEPH CALEB CENTER NEW PARKING GARAGE  
ISD CONTRACT NO. Z00051-PG GOB ESP  
SECTION 00500 - CONSTRUCTION CONTRACT**

THIS CONTRACT, made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Miami-Dade County, Florida, acting by and through the Office of The Mayor, party of the first part (hereinafter sometimes called the "County"), and **ABC CONSTRUCTION, INC.**, party of the second part (hereinafter sometimes called "Contractor");

**W I T N E S S E T H**

That the parties hereto, for and in consideration of the covenants and agreements hereinafter set forth, mutually agree as follows, to wit:

1. That the Contractor shall furnish all plant, labor, materials and equipment and perform all work in the manner and form provided by the Contract Documents covering the Project of the County known and identified as **Joseph Caleb Center New Parking Garage** for the amount reflected by the Proposal, based on the Contract prices shown in the Proposal heretofore provided by the County, a copy of said Proposal being a part of the Contract Documents, the aggregate amount of this not to exceed **Nine Million Six Hundred and Forty-Four Thousand Eight Hundred and Forty Dollars (\$9,644,840)**.
2. That the Contractor shall begin the work to be performed under this Contract on a day to be specified in a written order issued by the Engineer, and shall fully complete all work hereunder within the time or times stated within the Contract Documents.
3. That the County shall pay to the Contractor for the faithful performance of this Contract in lawful money of the United States, and subject to additions and deductions as provided in the Contract Documents, the total amount of the aggregate prices for work performed as set forth above at the times and in a manner stated in the General Covenants and Conditions of the Contract Documents.
4. It is further mutually agreed that if at any time after the execution of this Contract and the Performance Bond and Payment Bond, the County shall find the surety upon such bonds to be unsatisfactory, or if for any reason such bond shall become inadequate to cover the performance of the work, the Contractor shall at his own expense, within five (5) days after the receipt of notice from the County to do so, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the County. In such event, no further payment to the

Contractor shall be deemed to be due under this Contract until such new or additional surety shall have been furnished in a manner and form satisfactory to the County.

5. The "Contract Documents" are hereby defined as: (electronic check box)

- |   |   |
|---|---|
| <input type="checkbox"/> Questionnaire  | <input checked="" type="checkbox"/> Proposal  |
| <input checked="" type="checkbox"/> Advertisement for Bids                                | <input checked="" type="checkbox"/> Financial Statement   |
| <input checked="" type="checkbox"/> Instructions to Prospective Contractors               | <input checked="" type="checkbox"/> General Covenants and Conditions                                    |
| <input checked="" type="checkbox"/> Code and Ordinance Requirements                       | <input checked="" type="checkbox"/> Supplemental General Covenants and Conditions                       |
| <input checked="" type="checkbox"/> Bid Protest Information                               | <input type="checkbox"/> Applicable Federal Requirements  |
| <input checked="" type="checkbox"/> Special Provisions                                    | <input checked="" type="checkbox"/> Small Business Development Provisions                               |
| <input checked="" type="checkbox"/> Vendor Affirmation Affidavit                          | <input checked="" type="checkbox"/> Wages and Benefits Provisions                                       |
| <input checked="" type="checkbox"/> Specific Code / Affidavits Applications               | <input checked="" type="checkbox"/> Specifications  |
| <input type="checkbox"/> Ownership Disclosure Form  | <input checked="" type="checkbox"/> Standards   |
| <input checked="" type="checkbox"/> Community Workforce Program Job<br>Order Request Form | <input checked="" type="checkbox"/> Performance and Payment Bond<br>(if required, Bid Bond is required) |
| <input checked="" type="checkbox"/> Contract  | <input checked="" type="checkbox"/> All Addenda Issued  |
| <input checked="" type="checkbox"/> Bid Bond  | <input type="checkbox"/> Other  |
| <input checked="" type="checkbox"/> Plans / Sketches                                      |   |

6. The terms and conditions of said Contract Documents are incorporated herein by reference and made a part hereof as though fully set forth herein. The Contract Documents are complementary, so that a recital in one is tantamount to a recital in all, and the Contractor specifically acknowledges that he has read and understands all of said Contract Documents.

7. The various indemnities of the Contractor contained in the Contract Documents indemnifying the County from liability for damages to persons or property caused by acts, omissions, or defaults in the performance of the Contract Documents shall have a monetary limitation of the larger of the following: \$1,000,000, or the entire amount of the Contract.

8. The County retains the right to audit any and all information regarding this Contract as described in Article 18, "AUDIT RIGHTS BY AUDIT AND MANAGEMENT SERVICES AND BCC AUDITOR" of the Instructions to Prospective Contractors.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

**WHEN THE CONTRACTOR IS A CORPORATION**

ATTEST:  
Secretary:

Signature

Legal Name of Corporation

By:

Legal Name of Corporation

Signature

(Corporate Seal)

Legal Name and Title

**WHEN THE CONTRACTOR IS A PARTNERSHIP**

ATTEST:  
Witness:

Signature

Legal Name of Partnership

Witness:

Signature

Legal Name and Title

Date Signed

By:

Signature

(Seal)

Legal Name and Title

By:

Signature

**WHEN THE CONTRACTOR IS A SOLE PROPRIETORSHIP  
OR OPERATES UNDER A TRADE NAME**

ATTEST:

Witness:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Legal Name of Firm

Witness:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Legal Name of Firm

\_\_\_\_\_  
Date Signed

By:

\_\_\_\_\_  
Signature

**WHEN THE CONTRACTOR IS AN INDIVIDUAL**

Witness:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Legal Name

Witness:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**ACKNOWLEDGEMENT:**

STATE OF \_\_\_\_\_) ss.:

COUNTY OF \_\_\_\_\_)

Before me personally appeared \_\_\_\_\_ to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that \_\_\_\_\_ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Serial Number

\_\_\_\_\_  
Print or Stamp name of  
Notary

\_\_\_\_\_  
Expiration Date

State of \_\_\_\_\_ at large



## MIAMI-DADE COUNTY, FLORIDA

Approved as to Insurance Requirements:

Approved for Legal Sufficiency:

**Risk Management Division**

**Assistant County Attorney**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**IN WITNESS WHEREOF** the said MIAMI-DADE COUNTY, FLORIDA, has caused this Agreement to be executed in its name by the County Mayor or County Mayor's designee, attested by the Clerk of the Board of County Commissioners, and has caused the seal of the Board County Commissioners to be set hereto, as executed and attested by the undersigned this day and year first above written.

ATTEST:

FOR:

**BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

**HARVEY RUVIN  
Clerk of the Court**

**CARLOS A. GIMENEZ  
County Mayor**

By: \_\_\_\_\_, Clerk of the Board

By: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution:**

One Original to Clerk of the Board  
One Original to User Department  
One Original to Small Business Development Division, RER  
One Original to Contractor  
One Original to Project Manager

**THIS PAGE INTENTIONALLY LEFT BLANK**

**Harvey Ruvin**  
CLERK OF THE CIRCUIT AND COUNTY COURTS  
Miami-Dade County, Florida



**CLERK OF THE BOARD OF COUNTY COMMISSIONERS**  
STEPHEN P. CLARK CENTER  
SUITE 17-202  
111 N.W. 1<sup>st</sup> Street  
Miami, FL 33128-1983  
Telephone: (305) 375-5126

August 27, 2014

Mr. Christopher Perez-Gurri  
Geffin-Perez-Gurri  
101 NE 3<sup>rd</sup> Avenue, Suite 1110  
Fort Lauderdale, FL 33301

Re: Bid Protest – Z00051-PG – Joseph Caleb Center New Parking Garage

Dear Mr. Perez-Gurri:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the Honorable Judge Eugene J. Fierro, Hearing Examiner, in connection with the foregoing bid protest hearing which took place on August 20, 2014.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,  
HARVEY RUVIN, Clerk  
Circuit and County Courts

By

Christopher Agrippa, Director  
Clerk of the Board Division

CA/mf  
Attachment

Mr. Christopher Perez-Gurri  
Geffin-Perez-Gurri  
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cc: Honorable Chairwoman Rebeca Sosa, and  
Members, Miami-Dade County Board of County Commissioners (via email)  
Carlos A. Gimenez, Mayor, Miami-Dade County (via email)  
Alina Hudak, Deputy Mayor, Miami-Dade County (via email)  
R.A. Cuevas, County Attorney (via email)  
Hugo Benitez, Assistant County Attorney (via email)  
Daniel Frastai, Assistant County Attorney (via email)  
Jenelle Snyder, County Attorney's Office (via email)  
Rita Gonzalez, County Attorney's Office (via email)  
Donna Hadeed, County Attorney's Office (via email)  
Charles Anderson, Commission Auditor (via email)  
Elizabeth Owens, BCC Legislative Analyst, Commission Auditor's Office (via email)  
Lester Sola, Director, ISD (via email)  
Miriam Singer, Assistant Director, Procurement Management, ISD (via email)  
Amos Roundtree, Director, Purchase Division, ISD (via email)  
Walter Fogarty, Manager, Procurement Vendor Services, ISD (via email)  
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CLEAR OF THE BOARD

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CLERK, COUNTY CLERK  
MIAMI-DADE COUNTY FLA.  
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## Report and Recommendation of Hearing Officer

### Preliminary Statement

This matter concerns a Bid Protest filed by Perez-Gurri Corporation, d/b/a N&J Construction, a Florida Corporation, (hereinafter N&J) of Miami-Dade County's (hereinafter the County) recommendation to award contract number Z00051-PG, (hereinafter the Project) to ABC Construction, Inc., (hereinafter ABC), who was determined by the County to be the lowest responsive and responsible bidder for the Project on the grounds that the County arbitrarily and capriciously ignored its own requirements in making the award to ABC. The Project consists of the construction of a new parking garage at the Joseph Caleb Center. The Advertisement For Bids for the Project identified responsibility requirements, the purpose of which is to ensure that the bidders had, or have, sufficient experience as a prime contractor to build the new parking garage. N&J argues, in part, that each bidder was required to demonstrate experience as a prime contractor responsible for the construction of one parking garage of comparable size and complexity to the facility described in this solicitation, or experience as a prime contractor responsible for the construction of one building structure of comparable size and complexity to the facility described in this solicitation.

N&J argues that the advertised responsibility requirements were not consistent with those identified in the project manual which thereby caused a subsequent issuance by the County of an Addendum No. 2 revising the responsibility requirements. The revised requirements reflect that the Project had special circumstances which warranted the imposition of additional requirements on the prospective bidders, i.e., the afore-described comparability and complexity requirements.

Three construction companies bid on the project. When the bids were opened on November 22, 2013, ABC, the awarded bidder, had the lowest bid. The second lowest bidder was Lunacon Construction Group, (later determined to be non-compliant). The third lowest bidder was N&J, the Protester herein. On March 11, 2014, the County issued its Notice of Recommendation For Award reflecting that the County intended to award the Project to ABC. On March 14, 2014, N&J timely filed its Notice of Intent to protest the formal bid, resulting in this hearing.

The undersigned Hearing Officer has considered the testimony and exhibits received at the hearing, as well as all documents, exhibits, written submissions, including those of the Intervenor, and awarded bidder, ABC, that were received in this case. Appearing at the hearing on behalf of N&J were Alan Geffin (attorney representing N&J), Michael Perez-Gurri from N&J, Dr. Ron Zolo (a witness for N&J) and Jerry Demarco (witness for N&J). On behalf of the County present were Assistant County Attorney Daniel Frastai and Tara Smith from Division Director for ISD Construction Services. On behalf of ABC was Ira Libanoff (attorney for ABC). Also present were Carol Hayes who was with a witness for N&J and Jorge Gonzalez for ABC.

Although this recommendation does not recite verbatim each and every statement of testimony and evidence provided by the parties, nor witnesses, nor resumes the exhibits presented, the Hearing Officer, nonetheless, has considered the testimony provided, the exhibits in evidence, all submissions, and determined the probative value of each. Part of N&J's protest, is that ABC, in its bid submission, failed to satisfy the responsibility requirements of the County when it identified one of its projects, to wit, the MIA Surface Parking lot at Miami International Airport and several others that it submitted to the County. The County concedes that the submission of the surface parking lot was, in fact, not compliant with the County's requirements,

but argues that the additional submission by ABC, taken in conjunction with all other factors the County considered, was, in fact, in compliance with the County's requirements. Simply put, N&J opines that ABC doesn't have the experience as a prime contractor responsible for the construction of one parking garage of comparable size and complexity to the facility described in this solicitation, nor experience as a prime contractor responsible for the construction of one building structure of comparable size and complexity to the facility described in this Solicitation. Further, N&J argues that the County acted arbitrarily and capriciously when it recommended that the project be awarded to ABC in direct conflict with its own requirements as heretofore mentioned. The County argues that ABC did, in fact, meet the responsibility requirements of the County's Solicitation, including the requirement that it previously had constructed a facility, or facilities, as a prime contractor responsible for the construction of one parking garage of comparable size and complexity to the facility described in this solicitation, or experience as a prime contractor responsible for the construction of one building structure of comparable size and complexity to the facility described in this solicitation. The County further argues, as does ABC, the Intervenor, that N&J failed to provide any evidence that the County acted arbitrarily, dishonestly or capriciously in awarding the bid to ABC.

#### **Standard of Review**

Governmental decisions in the field of competitive procurement are to be given a wide deference. As the Florida Supreme Court stated, in Florida a public body has wide discretion in soliciting and accepting bids for public improvement and its decisions when based on an honest exercise of its discretion, will not be overturned by a court, even if it may appear erroneous, and even if reasonable persons disagree. *Liberity County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982) (finding that there was no illegality, fraud, oppression or misconduct

on the part of the government entity, the Court found that it was clearly within the Commission's discretion to award the subject bid). Furthermore, only a showing of clear illegality will entitle an aggrieved bidder to judicial relief. *Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988). The scope of review here is limited to whether the purposes of competitive bidding have been subverted. In short, a hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly. In order to challenge an award of a "public contract to an apparent low bidder, appellant is required to establish that it had a "substantial interest" to be determined by the agency. A second lowest bid establishes that substantial interest." *Preston Carroll Company v. Florida Keys Aqueduct Authority*, 400 So.2nd 524, 3rd DCA, 1981.

#### **Findings of Fact**

The County issued a request for a price quotation for the construction of the Joseph Caleb Center's new parking garage, ISD Contract No. Z00051-PG, a two-story structure with 324 parking spaces of 152,379 square feet. The advertisement for bids for this project identified Responsibility Requirements, which are mandatory prerequisites for bidders wishing to bid on the project, to ensure that the bidders have sufficient experience as a prime contractor to build the new parking garage. Miami-Dade County's Implementing Order No. 2-13 provides the following definition of responsibility.

Responsibility deals with whether the bidder, or proposer, can perform as provided in the Solicitation. In general, Solicitation requirements for information relating to a bidder or proposer's financial condition, capability, experience and past performance pertain to responsibility. The term, responsible, is not limited in its meaning to financial resources and capabilities, but include a



bidder or prospective proposer's honesty and integrity, skill and business judgment, experience and capacity for carrying out the proposed work, previous conduct under other contracts, and the quality of the previous work performed. The terms of the solicitation document cannot ordinarily change an issue of responsibility into one of responsiveness. A bidder or proposer need not demonstrate compliance with solicitation requirements pertaining to its responsibility in order for its bid or proposal to be deemed responsive and evaluated. Information regarding a bidder or proposer's responsibility may be furnished up to the time of award.

Miami-Dade Implementing Order 2-13 (2011). As stated herein, each bidder was required to demonstrate experience as a prime contractor responsible for the construction of one parking garage of comparable size and complexity to the facility described in this solicitation, or experience as a prime contractor responsible for the construction of one building structure of comparable size and complexity to the facility described in this solicitation. The bids were opened on November 22, 2013. A total of three construction companies bid on the project. The lowest bidder was ABC, who was awarded the project. The second lowest was Lunacon Group (subsequently found to be non-compliant), and the third lowest bidder was N&J, the Protester herein.

At some point after bidding, the County and ABC met to discuss ABC's qualifications. ABC submitted a list of other projects it engaged in in support of its bid. Ms. Smith, Division Director of Design and Construction Services, testified that said list was just one of many elements that the County utilized in evaluating ABC's responsibility and responsiveness to the bidding process. Thereafter, on March 14, 2014, N&J timely filed its Notice of Intent to Protest the Formal Bid, and timely filed its Protest and Supplemental Protest. N&J has standing to file

this protest. ABC, in its bid submission, identified several of its other projects pending, in progress, or completed, in compliance with the County's responsibility requirement. The County's forms enable a contractor to provide additional information regarding the identified projects that are submitted as being comparable.

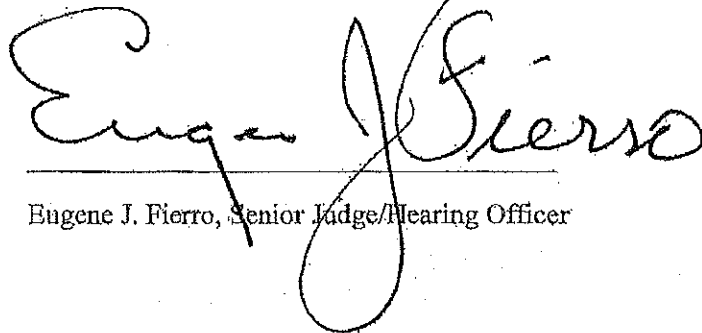
While reasonable persons may differ as to whether the list of projects submitted by ABC, and testified to by witnesses in this hearing, more specifically, Ms. Smith, were building constructions of comparable size and complexity and/or parking garages of comparable size and complexity to the facility described in the Solicitation, the County's evaluation of the submissions was not, in fact, arbitrarily and capriciously made. The County acted within its broad discretion in recommending that ABC be awarded the contract. Further, N&J has presented no evidence that the County acted fraudulently, arbitrarily, illegally, or dishonestly. In evaluating the bid submitted by ABC, the Internal Services Department conducted a thorough responsibility review to determine whether or not ABC was a responsible bidder. The Acting Director of the Design and Construction Services Division of the Internal Services Department prepared and issued a Memorandum addressed to the Internal Services Department Director outlining the responsibility review conducted by the department and its conclusions. This responsibility review included a review of ABC's past performance on County projects, capacity of their personnel to perform the services, a due diligence verification, and a report on business and litigation. It also involved a review of the list of projects included in ABC's bid. After completing the evaluation, the Department determined that ABC was a responsible bidder and was the lowest responsive and responsible bidder. And, in so doing, the County was acting not only well within the discretion to award the bid to ABC, but, in fact, was required to do so.

N&J's argument that ABC is not responsible in its bid, and that ABC listed several projects that are not in compliance with the County's requirements, is not persuasive.

### RECOMMENDATIONS

Based upon the foregoing findings, the Hearing Officer finds that the County did not act in an arbitrary or capricious manner in rejecting the Protester's bid, and in awarding the contract to the recommended bidder, ABC. Therefore, it is recommended by this Hearing Officer that the award for the project be upheld, and that the protest be denied.

This Report and Recommendation of the Hearing Officer is being filed with the Clerk of the Board this 26<sup>th</sup> day of August, 2014.



Eugene J. Fierro

Eugene J. Fierro, Senior Judge/Hearing Officer

Copies to be provided to all parties.